Supreme Court, U.S.
FILED
AUG 6 1999
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(6)

No. 98-7809

In The

Supreme Court of the United States

SALVADOR MARTINEZ,

Petitioner,

v.

COURT OF APPEAL OF CALIFORNIA,

Respondent.

On Writ Of Certiorari To The Supreme Court Of The State Of California

JOINT APPENDIX

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August 6, 1999

Petition For Certiorari Filed January 15, 1999
Certiorari Granted April 19, 1999

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September 3, 1998 – Defendant files timely notice of appeal

October 16, 1998 – California Court of Appeal, Fourth Appellate District, denies defendant's request to represent himself on appeal

October 27, 1998 – Defendant files petition for writ of mandate with California Surpeme Court

November 18, 1998 – California Supreme Court denies petition for mandate

December 29, 1998 – Defendant files petition for writ of certiorari in U.S. Supreme Court

January 14, 1999 – California Court of Appeal, Fourth Appellate District stays defendant's appeal pending ruling by U.S. Supreme Court on petition for writ of certiorari

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. SALVADOR MARTINEZ, Defendant and Appellant.	) G024042)) (Super. Ct. No. 98CF1062))) ORDER)) (Filed Oct. 16, 1998)

Appellant's motion to represent himself on appeal is DENIED. (*In re Walker* (1976) 56 Cal.App.3d 225.)

SILLS, P.J.
SILLS, P.J.

S074348

IN THE SUPREME COURT OF CALIFORNIA

SALVADOR MARTINEZ, Petitioner

v.

FOURTH APPELLATE DISTRICT DIVISION THREE, Respondent

THE PEOPLE, Real Party In Interest

(Filed Nov. 18, 1998)

Application for stay and petition for writ of mandate/ prohibition DENIED.

/s/ George
Chief Justice

ORANGE COUNTY PROBATION DEPARTMENT
PRESENTENCE REPORT

(Filed Aug. 24, 1998)

SUPERIOR COURT – DEPT. 44
AUGUST 28, 1998, 9:00 AM

Defendant: MARTINEZ, SALVADOR

AKA: SEE ADDENDUM

Address: 1561 POTOMAC ST., PLACENTIA, CA

Telephone: 714-961-8331

DPO: LINDA STRONG:sb

Court #: 98CF1062

Probation #: A-258208

Present Whereabouts: OCJ

Attorney: IN PROPRIA PERSONA

COURT STATUS

Present Offense: CT 2: 503 PC (FRAUDULENT APPROPRIATION OF PROPERTY OF ANOTHER), FEL.; PENAL CODE SECTIONS 667(d) & (e)(2) & 1170.12(b) & (c)(2); 667.5(b) PC

Off. Date: 4/1/98 **Arr Date:** 4/9/98
Arr Agn: SANTA ANNA P.D.

Filed: INF. 5/26/98 **Guilty by:** JURY
Date: 7/15/98 **Days Custody:** 142
Codefendants: NONE

DESCRIPTION

Age: 50 **Sex:** MALE

DOB: 08/24/1948 **POB:** SAN ANTONIO, TEXAS

Height: 5-10 **Weight:** 170

Hair: GREY **Eyes:** BROWN

Ethnicity: HISPANIC **Arrival in CA:** 1967

Citizenship: U.S. CITIZEN **ID Marks:** NUMEROUS TATTOOS

DMV: CA B8274687 **Expires:** 8/24/02

SSN: 458-74-7089 **CDC:** NONE

FBI: 908121F **CII:** A09450460

OCSO: 719813 **Booking #:** 1809843

EMPLOYMENT HISTORY

Last or Present Employer: LAWRENCE MERRYMAN, SANTA ANA

Date Began: 1/98 **Date Term:** 4/9/98
Reason: ARREST

Type of Work: PARALEGAL
Work Phone: 714-543-1609 **Salary:** $350/WK.

Job Skills Possessed: PARALEGAL. CARPENTRY

Previous Employment

From	To	Employer	Type Work	Salary	Reason
8/94	8/95	WILLIAM FERNSIDE ATT	PARALEGAL	$500/WK.	ARREST
1985	1992	ARNULFO ORTIZ ATT.	PARALEGAL	$750/WK.	ARREST

ADDENDUM

AKAs:

MARINEZ, SALVADOR PINA, JR
MARTINEZ, SALAVDOR
MARTINEZ, SALVADO PINA, JR
MARTINEZ, SALVADOR, JR

MARTINEZ, SALVADOR PINA
MARTINEZ, SALVADORE P
PINNON, SONNY

BIRTH DATES: SOCIAL SECURITY NUMBERS:

No additional . . . 458-47-7089
468-47-7089
468-74-7089

MARITAL HISTORY

Current Spouse **Home Address**
NONE

Occupation: **Employment Address:**

DOB **Date/Place Marriage** **Status**

Phone:

Children	Address	DOB	Sex	Other Parent
SALVADOR MARTINEZ	FRESNO, CA	11/24/67	M	MARY TORRES
CHRISTOPHER	" "	7/11/71	M	" "
MELISSA	" "	11/24/72	F	" "

Previous Spouse **Address**
MARY TORRES FRESNO, CA

Date Married **Date Terminated**
1974 1985

FAMILY DATA

Father: SALVADOR MARTINEZ **Age:** 75
POB: MEXICO **Occupation:** RETIRED
Address: SAME AS DEFENDANT **Phone:** S.A.D.
Mother: MARINA MARTINEZ **Age:** 69
POB: TEXAS **Occupation:** RETIRED

Address: SAME AS DEFENDANT **Phone:** S.A.D.

Brothers/Sisters	Age	Address	Phone	Occupation
VILMA MARTINEZ	55	LOS ANGELES, CA	UNKNOWN	ATTORNEY
LINDA HERNANDEZ	53	CERRITOS, CA	562-926-4322	SERVICE PROCESSOR
ELIZABETH BOND	46	YORBA LINDA, CA	UNKNOWN	MANAGER
JAMES MARTINEZ	40	LOS ANGELES, CA	UNKNOWN	BUSINESS OWNER

Former Residences	From	To
2126 N. CEDAR #C, FRESNO, CA	1994	1995
139 WISEMAN ST., SAN ANTONIO, TX	1985	1992

EDUCATIONAL BACKGROUND

Highest Grade Completed: 12TH

Where: SAN ANTONIO

Degrees Held: H.S. GRAD.

Job Training: SELF TAUGHT PARALEGAL

PERSONAL INFORMATION

Current Health: GOOD

Past Health Problems: BROKEN COLLARBONE 1974, BACK PROBLEMS

Religion: CATHOLIC

Military Record: NONE

Hobbies and Interests: READING

Alcohol: INFREQUENT USE

Drugs: HEROIN, MARIJUANA, COCAINE, LSD, "UPPERS" & "DOWNERS"

Previous Treatment Programs: METHADONE DETOXIFICATION & MAINTENANCE

Year	Vehicle(s) Owned/Model	Color
	NONE	

Firearms Owned/Possessed: NONE

COURT STATUS

On May 26, 1998, an Information was filed in the Orange County Superior Court charging the defendant with violation of the following:

Count 1: Section 487(a) of the Penal Code (Grand Theft), a felony, (victim: Maricela P.).

Count 2: Section 503 of the Penal Code (Fraudulent Appropriation Of Property Of Another), a felony.

It was further alleged that the defendant has previously suffered the following prior convictions of serious or violent felonies, within the meaning of Penal Code Sections 667(d) and (e)(2) and 1170.12(b) and (c)(2):

1. Robbery, in the District Court, County of Bexar, State of Texas, on and about May 24, 1976, case number 75-CR-2948.

2. Aggravated Robbery With Weapon – Gun, in the District Court, County of Bexar, State of Texas, on and about May 24, 1976, case number 75-CR-2950.

3. Aggravated Robbery With Weapon – Gun, in the District Court, County of Bexar, State of Texas, on and about May 24, 1976, case number 75-CR-2949.

It was further alleged as to the above counts that the defendant was previously convicted of the following felonies, and that he then served a separate prison term in state prison for said offense, and that he did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during, a period of five years subsequent to the conclusion of said term, within the meaning of Penal Code Section 667.5(b):

1. Forgery, in the District Court, Bexar County Judicial District, State of Texas (case number 76-CR-0941), on or about May 24, 1976.

2. Mailing Threat To Destroy A Building, in the U.S. District Court, Eastern District, (case number 955256), on or about April 29, 1996.

3. Unlawful Possession Of A Controlled Substance, in the District Court, Bexar County Judicial Court, State of Texas, (case number 84-CR-02605), on or about January 28, 1985.

On July 15, 1998, following a jury trial in which the defendant represented himself in propria persona, the defendant was found not guilty of Count 1. He was found guilty of Count 2.

On July 16, 1998, following a jury trial on the priors, the jury found the priors to be true. A probation and

sentencing hearing was set for August 28, 1998 in Department 44, and the Probation Department was ordered to prepare a probation and sentencing report.

COLLATERAL INFORMATION

Records of the Orange County Sheriff's Department Jail (Booking# 1809843) reveal that on May 11, 1998, the defendant was supplementally booked for violation of United States Government Code 18-3148(B) (Violate Release Order) warrant case number CRF95526. There is no bail on this matter.

CIRCUMSTANCES OF THE OFFENSE

Information for this section was obtained from records of the Santa Ana Police Department (DR#98-16339), records of the Orange County District Attorney's Office (DA#98F04921), and a review of transcript of preliminary examination dated May 13, 1998, case 98CF1062, and may not represent exact testimony as heard at trial. On April 1, 1998, Maricela P. contacted the defendant, a paralegal, at the law office where the defendant was employed, requesting information regarding getting her boyfriend bailed out of jail. The defendant advised the victim that $6,000 would be required for the bond. The victim gave the defendant $6,000 in cash. However, bail was never posted, and it was subsequently determined that $6,000 would not have been sufficient for the release of the victim's boyfriend. Circumstances of this matter are as follows:

On March 27, 1998, victim Maricela P. retained Attorney Lawrence Merryman to represent her boyfriend, Sergio Valencia, who was arrested and jailed in Los Angeles County. At that time, Juan Esquival, who was employed as an interpreter and investigator for Attorney Merryman, told the victim that he and Attorney Merryman would be out of town for a few days and that, if she needed any help, to call the office and their paralegal, the defendant, would tend to her needs. It was the victim's understanding that the defendant was to be left in charge of the office.

On April 1, 1998, the victim phoned the defendant, asking about bailing her boyfriend out of jail. The defendant stated that he would help her. The victim gave him the necessary booking information.

A short time later, the defendant phoned the victim. He told her that she would have to get $6,000 in cash for bail. He advised that he had friends in a bail bond office, and could get a good price on the bail collateral.

The victim obtained $3,800 of her own money, then borrowed $1,000 from a friend, and $1,200 from Valencia's employer. Fearful of carrying so much cash around, she had her uncle drive her to Merryman's office. There, she gave the $6,000 to the defendant. He wrote her a receipt, and assured her that Valencia would be out of jail by that night.

When Valencia did not return home and next day, the victim phoned the defendant. She asked what had happened. He told her that he was trying to get the bail reduced, but had not received an answer from the Court. He advised the victim to be patient.

On the morning of April 3, 1998, the victim again spoke with the defendant. He told her that he was going to court at 11:00 a.m. to get the bail reduced, and would call her back. He phoned the victim that afternoon, telling her that he had arranged for Valencia's bail to be reduced to $80,000. The victim asked him if he needed $2,000 more to make ten percent of the $80,000. He replied that he didn't need it.

The victim waited. Again, Valencia was not released. The victim phoned the Los Angeles County Jail, and learned that Valencia's bail was $620,000.

On April 6, 1998, the victim spoke with Juan Esquival, who had returned from vacation. He advised that he did not know anything about the $6,000, and that the defendant acted without his knowledge in taking the money. He stated that the defendant was on Federal Probation, and lived at a nearby motel. When the victim stated that, as Martinez' employer, the law office would be responsible for the $6,000, Esquival told her that it wasn't their problem. He stated that the missing money was an issue between herself, the defendant, and the police. He stated that his office had never received, nor forwarded the bail money to any bondsman, and that no receipt copies documenting the transaction were present in the office.

Attorney Merryman subsequently advised that the defendant had been employed at his office for approximately two months as an office assistant, and that handling money for the purpose of posting bail was not part of the defendant's duties. He reported that the defendant is a "jail house lawyer" who has done some paralegal

work. The attorney commented that he had noticed that the defendant was not completing jobs that were assigned to him, and had "kept an eye on him" for the last several weeks.

On April 9, 1998, investigators determined that the defendant was registered at the Villager Inn. At approximately 10:30 a.m., they knocked on his door. There was no answer. Investigators maintained surveillance on the defendant's room for approximately an hour and 25 minutes. They then observed a female to exit the room carrying baggage. The defendant, also carrying baggage, followed her out of the room. He was taken into custody without incident.

The defendant subsequently waived his Miranda rights. He reported that he is a self-taught paralegal with 25 years experience who has previously worked at approximately 12 different law firms. He advised that, when Attorney Merryman and Esquival left for a trip, he was assigned to tend to the office duties and client matters. He stated that information had not been left with him about who to contact if a client inquired about a bail bond. He reported that, when the victim contacted him, he had used the phone book yellow pages to locate a bondsman willing to accept the bond for Valencia.

The defendant acknowledged having phoned the Los Angeles County Jail, and having learned that the bail for Valencia was $620,000. He further acknowledged having told the victim that she would need $6,000, and having received this money from her, giving her a receipt.

The defendant stated that the bonding company had sent a courier to Attorney Merryman's office. He reported

that he gave the courier the money, and also a receipt for the money. The defendant stated that he could not recall the name of the bonding company.

The defendant provided inconsistent statements regarding the details of his subsequent communications with the victim and the bonding company. He claimed that the bonding company had assured him that the bond had been taken. He further claimed to have left the receipts and "post-it" notes documenting the transaction in the law office.

Subsequent investigation determined that there had never been any attempt to reduce Sergio Valencia's bail of $620,000. During the preliminary hearing on this matter, Juan Esquival testified that he had not been able to locate any paperwork in the office documenting the transaction with the victim, but that a page was missing out of his receipt book. Esquival further testified that his office had never been involved in making bail arrangements for clients, never accepted money for purposes of bail, and routinely referred clients requesting bail information to bail bondsmen. Both Esquival and Attorney Merryman testified that they had not located the victim's $6,000 in their office.

VICTIM'S STATEMENT

A letter was sent to the victim in this matter, Maricela P., requesting her comments. Additionally, attempts were made to contact the victim by phone. As of the date of dictation, a response has not been received. Should information become available prior to the court hearing, it will be forwarded to the Court.

DEFENDANT'S STATEMENT

The defendant was interviewed at the Orange County Jail. In regard to this matter, he states:

> "I maintain my innocence. I didn't steal the money. I feel that one of the workers there – Juan Esquival – is the person who actually took the money. That was my defense [in the trial]. I feel that gentleman [Esquival] is one of the biggest con men [there is].
>
> "The reason that I chose to go "pro per" is that I knew there wasn't an attorney on earth who'd believe me once he saw my past [criminal record]. And I did the best I could to try to prove my innocence. That money was left there at the office."

The defendant acknowledges having a lengthy prior criminal history, which he attributes to his long-time, severe heroin addiction. He states that he has refrained from the use of heroin since 1994. In regard to the instant matter, he comments:

> "This case here is really something, even my history . . . [indicates I wouldn't do it]. If I had committed some wrongful act, I think I'd have taken the best deal [I could receive] and run with it. But I can't. I just can't."

In regard to a sentence for this matter, the defendant states that he does not believe any sentence is appropriate, as he believes that he is innocent. He has received new information since his trial, which he believes will demonstrate his innocence. He plans to make a motion for a new trial, and will provide this new information to the Court.

The defendant indicates that it is troubling to him to be again involved in the criminal justice system, when, for the first time in his adult life, he had been able to stay off heroin. He reports:

> "I was clean and I loved it. I loved every minute of it."

STATEMENTS OF REFERENCES AND INTERESTED PARTIES

Deputy District Attorney Tamara Jacobs, the prosecutor in the instant matter, advised in a phone conversation that she believes the defendant's potential sentence of 28 years to life is an appropriate disposition and sentence for the instant offense. District Attorney Jacobs advises the following regarding the defendant:

> "He has an extremely long history of violent crimes including armed robberies and a threat to bomb a building. Two of his robberies, that were armed with a gun, were against the same victim. He obviously preys upon people's weaknesses."

The District Attorney advises that the defendant is "a very intelligent man." She expresses the opinion that he has the capacity and the sophistication to think about the consequences of his actions. In regard to the instant matter, she states:

> "He embezzled money from somebody who was very concerned because their loved one was in custody. I think he shows that he has the intelligence and sophistication to plan these crimes.

> "Every time he has been released, he has committed another crime. He is not an active participant for good purposes to society, and I think society needs to be protected. He has not displayed any remorse for his conduct."

The defendant's sister, Linda Hernandez, in a phone conversation, advised that, before becoming involved in the instant matter, the defendant was "doing wonderful." She states that he was working and "was being functional."

Linda Hernandez had not been aware that the defendant was being charged under the "three strikes" statute. She expresses the opinion that this statute should not be used in the instant case, stating that the defendant presently is "absolutely not a danger to anyone." She acknowledges, "When he was an addict, there was difficulty with his making correct choices."

Ms. Hernandez reports that there was a change in the defendant in approximately 1992. She reports that, since that time, the defendant has been "a good brother and a good son," as well as being "a really good father" and playing "a closer role to his family." He had spent a lot of time with his parents. Ms. Hernandez notes that their father is presently in the hospital, severely ill with emphysema, and this, combined with the defendant's current legal situation, is placing stress upon the family.

Ms. Hernandez expresses the opinion that the defendant's past criminal history does not have anything to do with his present situation. She believes that he could be satisfactorily maintained in the community on formal probation.

The defendant's sister, Elizabeth Martinez Bond, submitted a letter in which she expresses the opinion that the defendant is not a threat to society, and that the "three strike" law should not be considered in his case for the following reasons:

> "He has been off drugs for numerous years. He is now very much involved and concerned with the well-being of his family. He has the training and skill to maintain a constant income. His past situations are behind him, [he] holds no grudges, and would like to move forward with a productive life; crime-free, drug free, and also be a law-abiding citizen."

Phone messages were left for the investigating officers in the instant matter, requesting their comments. As of the date of dictation, responses have not been received. Should information become available prior to the court hearing, it will be forwarded to the Court.

PRIOR RECORD

Record checks with the Department of Justice Bureau of Criminal Identification and Information, as well as automated Federal Bureau of Investigation and Interstate Identification Index records, records of the State of Texas, of the Orange County District Attorney's Office, and records of the United States District Court, Eastern District of California (Docket# CR-F-95-05256OWW), reveal the following record for the defendant:

Date	Agency	Offense	Disposition
1-23-67	U.S.D.E.A. – San Antonio PD	Dangerous Drugs – Narcotics Law	5 yrs probation.

9-23-75	San Antonio PD	Felony Robbery – Threats	Filed 75-CR-2948, 5-24-76 20 yrs prison; discharged from prison Nov. 1981.

According to records of the United States District Court, on September 23, 1975, the defendant drove up to a Photomat drive-thru. He advised the female attendant he had a gun and wanted her money. The attendant asked to see the gun. The defendant refused, but insisted he had one. The attendant gave him $27, at which time the defendant left.

9-25-75	San Antonio PD	Robbery – Aggrav. W/Deadly Weapon	Filed 75-CR-2950, 5-24-76 pled guilty, 5-20 yrs state prison.

Records of the 144th Judicial District Court, Bexer County, Texas reveal that the victim on this matter was Donna Geller, and that the defendant used a gun in committing the robbery.

10-11-75	San Antonio PD	Robbery – Aggrav. W/Deadly Weapon	Filed 75-CR-2949, 5-24-76 20 yrs prison; paroled 12-6-83.

According to records of the United States District Court, on October 11, 1975, the defendant entered a bar with a small handgun. He ordered the bartender and witnesses behind the bar. He directed the bartender to give him "all the money," and was handed $158. He then

ordered the witnesses into the men's bathroom, tied the door handle shut, and left. He was arrested on October 15, 1975, and admitted he had been involved in three robberies at the same bar. The victim in this matter was Donna Geller.

1-29-76	San Antonio PD	Felony Forgery	Filed 76-CR-0856, 5-24-76 10 yrs prison.

Records of the United States District Court reveal that the defendant forged a check in the amount of $150.

2-23-76	San Antonio PD	Felony Forgery	Filed 76-CR-0941, 5-24-76 pled guilty, 10 yrs prison.

Records of the United States District Court reveal that the defendant forged a check in the amount of $140.25.

6-25-76	United States Marshal – San Antonio	Threaten Life of U.S. District Judge	11-17-76 conv., 12-9-76 sent. 5 yrs custody.

According to records of the United States District Court, the defendant wrote a letter to a U.S. District Judge in Texas, threatening to blow up the Federal Building.

6-7-84	San Antonio PD	Felony Poss. Of Cont. Subs. – Heroin Under 28 Grams	Filed 84-CR-2605, 8-29-85 pled nolo contendre, 10 yrs prison, rel. on 10 yrs. prob.; 3-17-86 found in viol., prob. revoked, imposed 10 yrs prison.

United States District Court records reveal that the defendant was found in possession of one balloon of heroin, after being observed by police officers to make a drug transaction. He was paroled May, 1989, and was returned to prison subsequently several times for violating parole.

11-4-91	Santa Ana PD	487(1) PC (Grand Theft)	Legal motion granted, dismissed 9-19-96.

According to records of the Santa Ana Police Department (DR# 91-66710), on November 1, 1991, Rose Hernandez reported that the defendant, her brother, had borrowed her vehicle from her to drive to his methadone detoxification center. He was to return the vehicle within an hour. When, after a day, he had not done so, Hernandez reported the vehicle stolen.

Hernandez advised that the defendant is a drug user who frequented the Myrtle Street area. She went to the area checking for her car, knowing that the defendant

might be in the area buying drugs. She located the vehicle, and learned that, under false pretenses, he had sold it to Salvador Figueroa. Figueroa confirmed that the defendant had sold him the vehicle for $760, providing a pink slip which Hernandez had left inside the vehicle.

5-11-92	San Antonio PD	Aggrav. Assault Deadly Weapon – Non-Family	10-14-92: 180 days jail.

United States District Court records reveal that on May 11, 1992, the defendant pointed a shotgun at victim Angelina M. and threatened to kill her.

8-29-95	United States Marshal	18 USC 844(e) (Mailing Threat To Destroy A Building)	Filed CR-F-95-05256, 25 mos. w/36 mos. supervised release.

According to United States District Court records, on August 25, 1995, the defendant wrote and mailed a letter to the Chief United States District Court Judge, Eastern District of California, addressing the judge by name, threatening to blow up the Federal Building in Fresno. The text of the letter is as follows:

> "The laws of the state are so harsh, disproportionate to offenses, violate the eighth amendment of the United States Constitution and the ex-post facto clause of Article I, Section 10, of the U.S. Const. If this Federal Court does not declare the enhancements sections of the Penal Code "unconstitutional," I will cause the same explosion on this Federal Building as the Federal Building in Oklahoma City. I will blow up

> this Federal Courthouse building in Fresno in protest of the laws enacted in the Penal Code. I am not playing hide-and-seek, and I am being open as to my intentions and expressing my rights and views."

The defendant signed the letter, and provided his address. On August 29, he was contacted by FBI and U.S. Marshal agents, and acknowledged having written and mailed the letter. He was arrested at that time, and a search of his residence revealed nothing significant.

During an interview in April of 1996 for the federal presentence investigation report, the defendant admitted having written the letter, stating that he did so because he wanted to protest the constitutionality of the three strikes law. He stated that this law primarily affects the minority population, and he wished to challenge it. He further indicated that he knew he was going to be arrested, and believed he had to be incarcerated to litigate the issue.

The defendant also reported that he had a heroin habit costing approximately $100 a day. He acknowledged that his addiction to heroin, and the fact that he was using so much of it, may have been another reason he wanted to be incarcerated. He advised that he would like the Court to know he never intended to blow up the Federal Building, and is not a violent man.

In the federal presentence investigation report, the investigating U.S. probation officer advised the following:

> "There is no evidence to suggest the defendant could carry out his threat to 'blow up' the Federal Building. When his home was searched, no chemicals, dynamite, etc., was found. Also,

there is no information to indicate the defendant has had any training or special skills in this area."

The defendant presently declines to comment specifically on his prior convictions, as these matters have been alleged as enhancements on the Information in the instant case. However, he did report that his prior "strikes" are "remote in time." He states, "As far as violent priors, they occurred in the 1970s."

The defendant made the following general statement regarding his prior criminal record:

"That was my prior record, my addiction [to heroin]. That's what led me to do that [the crimes]."

The defendant states that, after he was released from prison on his sentence for the robberies, he ceased committing violent crimes. He also points out that, in the robberies, "No-one was hurt."

DMV History

A record check with the State of California Department of Motor Vehicles reveals that the defendant has not been issued a California driver's license. His identification card expires August 24, 2002. He does not have any departmental actions, convictions, failures to appear, or accidents.

ADJUSTMENT IN CUSTODY

Records of the Orange County Sheriff's Department Jail (Booking# 1809843) reveal that the defendant has

been incarcerated on this matter since April 9, 1998. He has one minor violation of jail rules for possession of contraband (having a torn towel in his cell).

PROGRESS ON PROBATION

Records of the 144th Judicial District, Bexar County, Texas reveal that on August 29, 1985, the defendant was released on probation. On March 17, 1996, he was found in violation of probation, probation was revoked and the defendant was committed to prison. His probation violations consisted of his having been unsatisfactorily terminated from the Trexan Program, and failing to report weekly to probation.

Records of the Federal Bureau of Investigation reveal that on June 18, 1996, the defendant was received at the Federal Correctional Institution at Terminal Island. On May 23, 1997, he was placed on supervised release status, United States Probation Office Sacramento. His case is presently assigned to Federal Probation Officer Rick Laiviere in the Fresno office. Officer Laiviere advises that he has only seen the defendant on one prior occasion. Prior to the defendant's arrest on the instant matter, the defendant had been supervised by the Santa Ana Federal Probation Office.

Following his arrest on the instant matter, his case was returned to the Fresno office.

The defendant reports that his supervising officer in Santa Ana was John Ingram, and that he had been doing

well on probation. Attempts were made to contact Probation Officer Ingram. It was learned that the officer recently retired, and is not available for contact.

SOCIAL HISTORY

Information for this section was obtained from an interview with the defendant, and from records of the United States District Court Presentence Investigation Report prepared for sentence date April 29, 1996. The defendant is the third of the five children born to the marriage of his parents in the City of San Antonio, Texas. He has resided for the majority of his life in San Antonio, but has also, periodically, lived in California, primarily in the Los Angeles area.

The defendant reports that he had a happy childhood, and was never the victim of physical or sexual abuse. His father drank alcohol heavily, but has now been sober approximately seven years. The defendant denies that domestic violence occurred in his parents' home, stating that his father yelled a lot, but was not physically violent.

The defendant received average grades throughout his childhood, and graduated from high school. He reports that he was not active in sports or music. He worked a lot with his father, who supported the family but his builder-contractor business. Comments the defendant, "I can build a house from the ground up." The defendant's mother was a homemaker. The defendant recalls that he was a quiet child.

The defendant began marijuana use at the age of 13. He comments, "I got into it pretty good." Within a few months, the defendant was smoking marijuana everyday.

After graduating from high school, the defendant continued working with his father in carpentry. At the age of 19, he was introduced to the intravenous use of heroin by a friend. He recalls that, within weeks, he was addicted to heroin.

The defendant reports that he made numerous attempts over the years to refrain from the use of heroin. He states,

> "All the thirty some years that I was a heroin addict, I never could really kick the habit. I was never able to kick on my own. I'd always have to seek a program to help me kick."

The defendant reports that, in 1994, he made a commitment to no longer use heroin. He presently states that he has been "clean" since that time.

Records of the United States District Court indicate that in April of 1996, the defendant reported that he had been using heroin, injecting approximately $100 worth of the drug a day.

District Court records also indicate that the defendant has previously used cocaine, LSD, and "uppers" and "downers". He has been in and out of drug treatment programs throughout his adult life. The defendant acknowledges having repeatedly participated in the methadone detoxification and maintenance programs.

The defendant presently states that he has been legally married on one occasion and has three adult children from that marriage. District Court records report that he has been married three times and has a total of four adult children. He is presently divorced. Prior to his arrest in August of 1995, he had been living with his son Christopher in the Fresno area.

The defendant advises that he presently has a girlfriend, 26-year-old Donna Telles. According to the defendant, Ms. Telles works as a legal secretary-office help, but is currently unemployed.

The defendant has worked off and on as a paralegal since approximately 1990, having apparently developed his legal expertise by studying law books in prison.

DISCUSSION AND EVALUATION

CIRCUMSTANCES IN AGGRAVATION

The Crime

421(a) – 11 The defendant took advantage of a position of trust or confidence to commit the offense, in that he had been left in charge of a law office, and the victim, whose boyfriend in jail was a client of the law office, turned to the law office, represented by the defendant, for assistance in obtaining the release of her boyfriend.

The Defendant

421(b) – 4 The defendant was on Federal probation when he committed the crime.

421(b) – 5 The defendant's prior performance on probation and parole in the State of Texas was unsatisfactory.

CIRCUMSTANCES IN MITIGATION

The Crime

423(a) – There do not appear to be any circumstances in mitigation relating to the crime.

The Defendant

423(b) – There do not appear to be any circumstances in mitigation relating to the defendant.

PROBATION ELIGIBILITY

413(a) – The defendant has been convicted of violation of Penal Code Section 503, and the Penal Code Section 667(d) and (e)(2) allegations have been found to be true. Therefore, probation is prohibited by Penal Code Section 667(c)(2).

EVALUATION

The Court has for consideration a 50-year-old defendant with a lengthy prior criminal history who, in the instant matter, took advantage of the opportunity presented to him by being essentially in charge of a law office, to falsely appropriate the property of the victim. The defendant, a self-taught paralegal, has a lengthy history of heroin addition. He reports that his prior criminal history has resulted from this addition, apparently

indicating that he committed crimes for economic gain in order to support his heroin habit.

The defendant presently insists that he has been sober since 1994. However, United States District Court records indicate that, at the time the defendant threatened to blow up the Federal Building in Fresno in 1996, he had an intravenous heroin habit which cost him approximately $100 a day. In the prior matter in which the defendant's sister alleged that the defendant had falsely appropriated her vehicle, selling it, she also advised that the defendant was frequenting an area known for a high level of narcotics activity, and might be going there to purchase drugs.

Given these factors, it is considered possible that the defendant may have relapsed into heroin use, before he committed the instant matter. It is noted that his employer, Attorney Lawrence Merryman, indicated to an investigating police officer that he was watching the defendant, prior to the attorney's leaving on a trip, and the defendant committing the instant matter. It is suspected that there may be additional emotional factors which led the defendant to commit the instant matter, factors pertaining to resentment regarding his personal situation, unresolved angers, and dependency needs. Whatever the cause of the defendant's conduct in the instant matter, it is noted that he was apparently an experienced paralegal, who clearly would have known his conduct was wrong.

The defendant is statutorily ineligible for probation supervision. Additionally, given his lengthy criminal history and prior unsatisfactory performance on probation,

he is seen as being inappropriate for probation supervision. Consequently, it will be recommended that probation be denied.

RECOMMENDATION

In view of the foregoing, it is respectfully recommended that probation be denied and sentencing imposed. Further, the defendant be ordered to pay a restitution fine pursuant to Section 1202.4(b) of the Penal Code, in the amount of $1,000.

Respectfully submitted,

MICHAEL SCHUMACHER
Chief Probation Officer

/s/ Linda D. Strong
Linda D. Strong
Deputy Probation Officer
569-2096 JS

Dated this 28th day of August, 1998.

I have read and considered the foregoing report of the Chief Probation Officer.

/s/ Daniel S. Illegible
JUDGE OF THE SUPERIOR COURT

LDS:sb